

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Development and Implementation  
of a Preliminary Site Assessment and Remedial  
Investigation/Feasibility Study for an Inactive Hazardous  
Waste Disposal Site Under Article 27, Title 13, and  
Article 71, Title 27 of the Environmental Conservation  
Law of the State of New York by:

**ORDER ON  
CONSENT**

**Index #:** D-7-0002-01-07  
**Site #:** 7-34-004

**Cooper Crouse-Hinds Division,  
a Division of Cooper Industries, Inc.**  
Respondent.

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**WHEREAS,**

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites," and has authority thereunder to investigate inactive hazardous waste disposal sites. This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13; Article 37; Article 71, Title 27; and Article 3, Title 3, Section 3-0301.

2. Cooper Crouse-Hinds Division is a Division of Cooper Industries, Inc. ("Respondent"), which is a corporation organized and existing under the laws of the State of Ohio and is doing business in the State of New York.

3. A. Respondent owns and operates a facility in the City of Syracuse, County of Onondaga and State of New York, which has manufactured electrical switches, panel boards and lights since 1912. The Respondent's facility includes a manufacturing plant located near the intersection of Seventh North Street and Wolf Street ("Manufacturing Plant") and two closed landfills (North Landfill and South Landfill). A railroad track separates the Manufacturing Plant from the North and South Landfills. The area of the North Landfill and South Landfill are collectively referred to herein as the "Site." The Site lies between the railroad track and Ley Creek, a tributary of Onondaga Lake, but the North Landfill property does not extend to Ley Creek. The Manufacturing Plant lies on the opposite (east) side of the railroad track. The general location of the Site is indicated on the map that is attached and hereby incorporated into this Consent Order as **Appendix A**.

B. According to documents submitted to the Department by Respondent, the Manufacturing Plant included a captive foundry which supplied iron, aluminum and bronze castings to the machining, finishing and assembly processes. Until 1962, Respondent operated an incinerator at the Manufacturing Plant. Respondent has asserted the specific materials incinerated are not known. From 1970-1983, processes in the manufacturing operation included zinc phosphating, painting, paint stripping, fabrication and assembly. Until 1970, untreated industrial wastewater was discharged to the City of Syracuse Seventh North Street storm sewer that discharged to adjacent Ley Creek. Respondent began treating its wastewater in the 1970s. This treatment includes removal of metals, foundry sand and oil.

C. The North Landfill was operated from the 1950s to 1989. It occupies an area of 21 acres, is located near the banks of Ley Creek, and lies within a 100-year flood plain. Respondent disposed of an unknown quantity of industrial waste of unknown composition from the mid-1950s until 1972 in the North Landfill. From 1972 to approximately 1979, Respondent estimates the North Landfill received approximately 85 cubic yards per day of industrial waste (foundry sand and paint scrapings), including hazardous waste(s). From 1979 to 1987, foundry sand, metal finishing dust, inert plastic waste and cupola waste were deposited in the North Landfill. The Department's 1983 Phase I Report concluded that cadmium, chromium, lead, zinc, phenols, cyanides, benzene, toluene and xylene are leaching into the groundwater from the North Landfill.

D. The South Landfill operated from 1960-1969. It occupies an area of approximately 17 acres and is located adjacent to Ley Creek. Records indicate the City of Syracuse operated this landfill from 1960-1963 and disposed 2,000 cubic yards of municipal waste per week. Thereafter, Respondent operated the South Landfill until 1969 and disposed of an unknown quantity of hazardous waste and industrial waste. The Department's 1983 Phase I Report concluded that high levels of cadmium and zinc are present in the subsurface soils of the South Landfill. Respondent represents it has no documentation regarding waste disposal practices at the Site prior to the Respondent's operation of the North and South Landfills.

E. Shallow groundwater at both the North Landfill and South Landfill flows toward Ley Creek. The Landfills are neither lined nor contained and the landfilled waste may extend beneath the shallow water table. Runoff from the landfills is directed toward drainage swales which discharge to Ley Creek.

4. In 1984, the Site was listed as New York State Inactive Hazardous Waste Disposal Site ("IHWDS") 7-34-004 pursuant to ECL § 27-1301(2). The Site was designated a "Class 3" IHWDS, which meant that regulatory action could be "deferred". The United States Environmental Protection Agency ("EPA") added the Onondaga Lake site to the National Priorities List ("NPL") on December 16, 1994 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 *et seq.*], as amended ("CERCLA"). The Onondaga Lake NPL site is composed of the Lake itself, its tributaries and the upland hazardous waste and hazardous substance sites which have contributed or are contributing contamination to the Lake. Ley Creek flows southwest to and is a tributary of Onondaga Lake. The Department and EPA have entered into a Cooperative Agreement pursuant to which EPA has designated the Department as the lead agency with respect to the Onondaga Lake NPL site and its subsites. Based on the available data concerning the Crouse-Hinds Site, the Department has determined, with EPA concurrence, that additional action is required at the Site in order to determine whether the Site is impacting Onondaga Lake or its tributaries.

5. A. The Department has the authority pursuant to ECL Article 27, Title 13 and ECL Article 3, Title 3, to issue an order to the owner of an inactive hazardous waste disposal site and/or any person responsible for the disposal of hazardous wastes at such site to (i) develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL Section 27-1313(3)(a) has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article

27. Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL Section 3-0301(1)(i).

6. The Department and Respondent agree that the goals of this Order are for Respondent: (i) to develop and implement a Preliminary Site Assessment ("PSA") to gather data to enable the Department to characterize hazardous wastes and hazardous substances which are or may be present at the Site; (ii) depending on the results of the PSA and the corresponding determination made by the Department pursuant to Paragraph IV of this Consent Order, to develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; (iii) to perform any mutually agreed upon Interim Remedial Measures ("IRMs"); and (iv) to reimburse the Department's administrative costs associated with the PSA, any RI/FS required to be performed, and any IRMs agreed to be performed.

7. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

8. The Department and Respondent agree that this Order is entered into without any admission of liability for any purpose, as to any matter arising out of the transactions or occurrences referring or relating in any manner whatsoever to the matters addressed by this Order.

**NOW, having considered this matter and having been duly advised, IT IS ORDERED THAT:**

I. Initial Submittals

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions at and emanating from the Site, and other information described below, except to the extent that the Respondent identifies to the Department any portions of the documents previously provided to the Department, if any, which contain such information or data. The data and other information to be submitted to the Department shall include:

A. A brief history and description of the Site, including the nature of operations (past and present) at the Site, the types, quantities, physical state, location, methods and dates of disposal of all hazardous wastes and hazardous substances at the Site (including spillage of such wastes); and a description of current Site security (*e.g.*, fencing, posting).

B. A concise summary of information held by Respondent and Respondent's attorneys, consultants and other agents with respect to all persons responsible for such disposal of hazardous wastes and hazardous substances, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes and hazardous substances identified pursuant to Subparagraph I.A;

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and

subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs; and

D. An 8.5-inch by 11-inch portion of a United States Geological Survey topographic map of the Site which contains the name of the quadrangle and an arrow indicating the orientation of a northern compass point.

## II. Preliminary Site Assessment Contents and Submittals

A. 1. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan for the implementation of a Preliminary Site Assessment ("PSA Work Plan") at the Site.

2. The PSA Work Plan shall describe the methods and procedures to be used in implementing a PSA.

B. 1. The PSA Work Plan shall include, but not be limited to, the following:

a. A Site-specific description of field activities together with a schedule for performance of these activities;

b. A Sampling and Analysis Plan that shall consist of the documents referred to in this subparagraph II.B.1.b, which shall also include:

i. A Quality Assurance Project Plan ("QAPP") that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and describe such individual's qualifications and experience. The QAPP shall be prepared consistent with *EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)*, Final, March, 2001 (see <http://www.epa.gov/QUALITY/qs-docs/r5-final.pdf>); and

ii. A Field Sampling Plan that describes the field sampling and data gathering activities proposed for the Site in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987), as amended and supplemented by EPA, and other applicable Department and EPA guidance.

c. A Health and Safety Plan to protect persons at and in the vicinity of the Site during the performance of the PSA shall be prepared in accordance with 29 C.F.R. 1910 (and all other applicable requirements) by a certified Health and Safety professional. Respondent shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site during the performance of any work pursuant to this Order.

2. The PSA Work Plan also shall satisfy the requirements for Phase II investigations identified in Division of Hazardous Waste Remediation Technical and Administrative Guidance Memoranda 4007 and 4008 and other appropriate Department technical and administrative guidelines that shall have been developed as of the time of submission of the PSA Work Plan.

### III. Performance and Reporting of PSA

A. Within 30 days after the Department's approval of the PSA Work Plan, Respondent shall commence the PSA.

B. Respondent shall perform the PSA in accordance with the Department-approved PSA Work Plan.

C. During the performance of PSA field work, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Respondent shall prepare a PSA Report that shall:

1. Include all data generated and all other information obtained during the PSA;
2. Provide all of the assessments and evaluations set forth in the guidance documents referred to in Subparagraph II.B.2;
3. Identify any additional data that must be collected;
4. Include information satisfying Step 1 of the Department's *Fish and Wildlife Impact Analysis, October 1994*, as referenced in the Department's guidance document entitled, *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998;
5. Include a reference, in all sample data supplied, to the geographic location of the sample point. Such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the National Geodetic Vertical Datum ("NGVD"), 1929 adjustment; and
6. Include a certification by the individual or firm with primary responsibility for the day to day performance of the PSA that all activities that comprised the PSA were performed in full accordance with the approved PSA Work Plan.

### IV. RI/FS Work Plan Contents and Submittals

A. Respondent shall perform an RI/FS upon the Department's direction to do so if the Department determines, as a result of reviewing the PSA submittal(s), data generated by an activity required under Paragraphs I-III of this Order, or as a result of reviewing any other data or facts, that hazardous wastes or hazardous substances are present at the Site and that the Department's evaluation of the presence or release of hazardous wastes and/or hazardous substances identifies a need for an RI/FS pursuant to the ECL and/or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 *et seq.*], as amended ("CERCLA").

B. Within 30 days after the Department issues any determination that Respondent is to perform an RI/FS, Respondent shall prepare and submit to the Department a detailed work plan describing how the PSA submittal(s) will be supplemented by the collection of additional data, if

necessary, and modified to comply with CERCLA guidance for the preparation of an RI/FS for the Site ("RI/FS Work Plan").

C. 1. The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological, site-specific description of the anticipated RI/FS activities, including the performance of a Human Health Risk Assessment and a Baseline Ecological Risk Assessment, together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

i. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

ii. A field sampling plan that defines sampling and data gathering methods in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as amended, and supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, *Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook*, dated June 1998, as amended.

2. The RI/FS Work Plan shall incorporate all elements of an RI/FS as set forth in CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") [40 C.F.R. Part 300], as amended, the EPA guidance document entitled *Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA*, dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate EPA and Department technical and administrative guidance documents, including the Department's guidance document entitled, *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998.

#### V. Performance and Reporting of Remedial Investigation

A. Within 30 days after the Department's approval of the RI/FS Work Plan, Respondent shall commence the Remedial Investigation ("RI").

B. Respondent shall perform the RI in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the RI, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. During the performance and reporting of the RI, Respondent shall assist the Department with citizen participation activities upon request by the Department.

E. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit a Remedial Investigation Report ("RIR") that shall:

1. include all data generated and all other information obtained during the performance of the RI;

2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph IV.C.2;

3. identify any additional data that must be collected;

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the RI that all activities that comprised the RI were performed in full accordance with the Department-approved RI/FS Work Plan; and

5. include a reference to the geographic location of the sampling point for all sample data supplied. Such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the National Geodetic Vertical Datum ("NGVD"), 1929 adjustment.

#### VI. Feasibility Study

A. Within 60 days after receipt of the Department's approval of the RIR, Respondent shall perform, prepare and submit a Feasibility Study ("FS") evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste and hazardous substance disposal at the Site. The FS shall be prepared by and have the signature and seal of a professional engineer who shall certify that the FS was prepared in accordance with this Order.

B. Respondent shall perform and prepare the FS in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, as amended, the NCP, and the guidance documents identified in Subparagraph IV.C.2.

C. Respondent shall cooperate and assist the Department in soliciting public comment on the proposed remedial action plan the Department prepares in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph IV.C.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department and EPA shall select a final remedial alternative(s) for the site in a Record of Decision ("ROD"). During the performance and reporting of the FS, Respondent shall assist the Department with other citizen participation activities, if any, upon request by the Department.

## VII. Interim Remedial Measures

A. Before the effective date of the ROD, the Department or Respondent may propose, for mutual agreement of the parties, IRMs for the Site on an as-needed basis. Within 30 days after an agreement has been reached for the performance of an IRM, Respondent shall submit to the Department a work plan ("IRM Work Plan") which shall include a chronological description of the anticipated IRM activities together with a schedule for the performance of those activities. Upon the Department's determination that a proposal submitted by Respondent is an appropriate IRM and its approval of a corresponding IRM Work Plan, or upon the Department's approval of an IRM Work Plan associated with a proposal of the Department, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order.

B. In accordance with the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department for its review and approval, detailed documents and specifications prepared, signed and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication entitled, *New York's Hazardous Waste Site Remediation Program: A Guidebook*, dated June 1998, as amended. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on Site a full-time representative who is qualified to supervise the work done.

C. In accordance with the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by the individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order. The report shall include all data generated, if any, and any manifests and documents generated under the IRM Work Plan, and a brief summary of the activities conducted, including waste removal, storage, disposal, handling and characterization ("Final IRM Engineering Report and Certification"). Subsequent to the submission of the Final IRM Engineering Report and Certification, and within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department, if applicable, a report or reports documenting the performance of the IRM and entitled the "Operations and Maintenance Report". Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved IRM Work Plan, detailed documents or specifications, and shall not modify any obligation unless first approved by the Department.

## VIII. Progress Reports

A. Respondent shall submit to the parties set forth in Subparagraphs XVIII.B copies of written monthly progress reports which shall:

1. Describe the actions which have been taken toward achieving compliance with this Order during the previous month;



2. Include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

3. Identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

4. Describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

5. Include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

6. Include any modifications to any work plans that Respondent has proposed or that the Department has approved; and

7. Describe all activities undertaken in support of any Citizen Participation Plan during the previous month and those to be undertaken in the next month under this Order.

B. Respondent shall submit these progress reports to the Department by the 10th day of every month following the effective date of this Order.

C. Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: pre-bid meetings; job progress meetings; substantial completion meeting and inspection; and final inspection and meeting.

#### IX. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, whether it is complete, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the Health and Safety Plan submittal discussed in Subparagraphs IV.C.1.c and VII.B. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it

shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, and unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Paragraph XI below, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

#### X. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that the Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of 9 percent (9%) on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to the "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under this Subparagraph pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and thereafter	\$ 1,500

#### XI. Dispute Resolution

A. If the Department disapproves a revised submittal (Subparagraph IX.A) or if Respondent declines to perform additional work that may be demanded by the Department (Subparagraph IX.B), Respondent shall be in violation of this Order unless, within 30 days of receipt of the Department's written notice of disapproval of a revised submittal, or within 30 days of its receipt of the Department's written demand for additional work, Respondent serves on the Department's Director of the Division of Environmental Remediation ("the Director") a written request to meet with the Director to discuss the Department's objections to the revised submittal and/or the Department's demands for additional work and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which the Respondent relies (the "Statement of Position").

B. The Department shall provide the Respondent with an opportunity to meet with the Director to discuss the Department's objections to the revised submittal and/or the Department's demands for additional work. Respondent and the Department shall meet at a mutually agreed upon time (the "Meeting").

C. An administrative record of any dispute under this Paragraph XI shall be maintained by the Department. The record shall include the Statement of Position of the Respondent and any other relevant information, including any information submitted by either party up to and including the time of the Meeting. The record shall be available for review by all parties and the public.

D. Upon review of the administrative record as developed pursuant to this Paragraph XI and taking into consideration the discussion of the parties at the Meeting with the Director, the Director shall issue a final written decision, resolving the dispute (the "Director's Decision"). The Director's Decision shall be a final agency determination for purposes seeking review under Article 78 of the CPLR. The period of time for revision of a submittal or commencement of additional work shall be set forth in the Director's Decision.

E. The invocation of formal dispute resolution procedures under Subparagraphs A - D above, shall excuse, toll and/or suspend during the pendency of the dispute resolution process the compliance obligation or deadline which is in dispute, and any other obligation or deadline which is dependent upon the matters in dispute, but shall not toll or suspend any other of Respondent's obligations under this Consent Order.

F. In the event of the Respondent's preparation of a required modified submittal, or a scope of work or work plan for supplemental work which the Department may demand, the Department shall notify Respondent in writing of its approval or disapproval thereof. If the modified submittal fails to adequately address the Department's comments contained in the Director's Decision, as modified, and the Department disapproves the submittal for this reason, Respondent shall be in violation of this Consent Order and ECL Article 71, Title 27.

G. Respondent may also dispute invoices for State costs issued by the State pursuant to Paragraph XIV of this Consent Order. If Respondent disputes a State invoice issued pursuant to Paragraph XIV of this Consent Order, Respondent shall invoke dispute resolution by: i) providing a written request, within 30 days of its receipt of the Department's invoice, for a meeting with the Director or Assistant Director of the Bureau of Program Management ("Program Management") to discuss Respondent's objections to the invoice; and (ii) by submitting therewith all pertinent information and documentation and a complete description of the basis for Respondent's objections. Program Management shall consider the information submitted and the conversation that takes place during the meeting and decide whether to modify the invoice. Program Management's written decision issued after the meeting shall be a final agency determination for purposes of seeking review under Article 78 of the CPLR. If Program Management revises the invoice, Respondent shall pay the revised invoice within 30 days of its receipt of Program Management's written decision.

H. Respondent's failure to pay the revised invoice within 30 days of receipt thereof or, if Program Management determines that the invoice need not be revised, Respondent's failure to pay the original invoice within 30 days of receipt of Program Management's written decision, shall be a violation of this Consent Order and subject to whatever enforcement action is within the Department's jurisdiction,

unless, within 30 days after receipt of Program Management's written decision, Respondent commences an action for review of Program Management's written decision pursuant to Article 78 of the CPLR.

## XII. Force Majeure

A. Respondent's failure to comply with any term of this Consent Order constitutes a violation of this Consent Order and ECL Article 71, Title 27.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, riot, or an event (including prohibitively severe or extraordinary weather conditions which materially interfere with implementation of the activities conducted pursuant to this Order) beyond the control of Respondent or its agents in carrying out Respondent's obligations under this Order ("Force Majeure Event"). A Force Majeure Event specifically excludes a lack of sufficient financial resources. Respondent shall, within five (5) days of when it obtains knowledge of any such Force Majeure Event, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is excusable under this subparagraph and not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

## XIII. Entry upon Site

Respondent hereby consents to the entry, upon notice that is reasonable under the circumstances, on the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor or agent of the Department, as well as by EPA and its designated representatives or agents, and any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

## XIV. Payment of Department Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site, as well as for negotiating this Order, to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

C. Such invoice shall be sent to the Respondent at the following address:

Michael J. O'Brien  
Director, Environmental Affairs  
Cooper Industries, Inc.  
600 Travis, Suite 5800  
Houston, TX 77002

D. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Attn: Bureau Director  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7010

E. Each party shall notify the other within 90 days of any change in the foregoing addresses.

XV. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;
2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;
3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;
4. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; and
5. the Department's right to gather information and enter and inspect the Site.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or her duly authorized representative from exercising any summary abatement powers.

#### XVI. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Respondent shall not be required to indemnify and hold the Department, the State of New York, and their representatives and employees harmless regarding any liability arising as a result of the gross negligence or recklessness, wanton or intentional misconduct by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

#### XVII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Onondaga County Clerk to give all parties who may acquire any interest in the Site notice of this Order, and shall simultaneously forward a true copy of the filed Declaration to the Department.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

#### XVIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

B. Written communications enclosing data, reports or other deliverables shall be sent as follows:

1. Five copies are to be forwarded to:  
Richard Mustico, Project Manager, Division of Environmental Remediation  
NYS DEC, 625 Broadway, 12<sup>th</sup> Floor, Albany, New York 12233-7016  
  
Of the five copies, one shall be an unbound hard copy with associated figures; and one shall be an electronic copy on compact disk(s). The electronic copy shall contain all text, tables, figures and appendices in Portable Document Format (PDF). Data is to be presented in accordance with **Appendix B** hereto.
2. Four copies are to be forwarded to: Robert Nunes, US EPA, Region II, 290 Broadway, 20<sup>th</sup> Floor, New York, NY 10007-1866
3. One copy is to be forwarded to each of the following: James Burke, NYS DEC, 615 Erie Boulevard West, Region 7, Syracuse, NY 13204-2400

Henriette M. Hamel, NYS Department of Health  
217 South Salina Street, 3<sup>rd</sup> Floor, Syracuse, NY 13202

4. Upon receiving formal approval of a submittal by the Department, Respondent shall submit two copies of such submittal to Richard Mustico of the Department for placement in the designated Document Repositories.

5. Copy of transmittal letters only to: Carol Conyers, Esq., NYS DEC, Division of Environmental Enforcement, 625 Broadway, 14<sup>th</sup> Floor, Albany, NY 12233-5500

George A. Shanahan, Esq., US EPA, Region II, 290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

Geoff Laccetti, New York State Department of Health  
547 River Street, Troy, New York 12180

C. Correspondence, including progress reports, which do not contain data, reports or deliverables need not be sent in electronic format and only one copy needs to be sent to each party listed in Subparagraph XVIII.B above.

D. Communication from the Department to the Respondent shall be sent to:

Robert W. Teets  
Vice President, Environmental Affairs and Risk Management  
Cooper Industries, Inc.  
600 Travis, Suite 5800  
Houston, TX 77002

E. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

#### XIX. Miscellaneous

A. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes and hazardous substances at the Site.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators to perform the technical, engineering, and analytical obligations required by this Order. The names, experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 10 days after the effective date of this Order. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling

and/or tests or other data generated by Respondent with respect to implementation of this Order, or otherwise, and shall submit these results in the progress reports required by this Order.

D. All data gathered for utilization during the RI/FS is to be transmitted to the Department in electronic format in accordance with the guidelines set forth in **Appendix B** to this Order.

E. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

F. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or other authorizations necessary to perform Respondent's obligations under this Order except that the Department may exempt Respondent from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that satisfies, in the sole discretion of the Department, all substantive technical requirements applicable to like activity conducted pursuant to a permit. If any access required to perform this Order is not obtained, despite all reasonable efforts, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access, within 45 days after: (i) the effective date of this Order; and (ii) the date, if any, upon which the scope(s) of the PSA, RI/FS and/or any IRM changes with the Department's approval, where such change(s) causes Respondent to require access from one or more additional owners. Thereafter, the Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XIV, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees of the Department.

G. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

H. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

I. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

J. All references to "days" in this Order are to calendar days unless otherwise specified.

K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. 1. The terms of this Order shall constitute the complete and entire Order between



Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

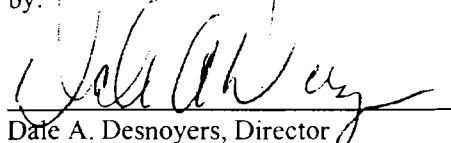
2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to: Carol Conyers, Esq..

M. The effective date of this Order shall be the date it is signed by the Commissioner or her designee.

DATED: Albany, New York  
, 2004

MAY 14

ERIN M. CROTTY  
Commissioner  
New York State Department  
of Environmental Conservation  
by:



Dale A. Desnoyers, Director  
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Robert W. Teets  
(SIGN NAME)

Robert W. Teets  
(TYPE NAME)

Title: Vice President, Environmental Affairs  
and Risk Management

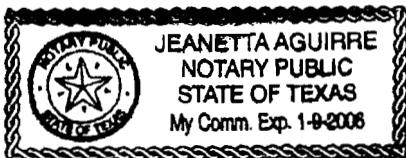
Company: Cooper Industries, Inc.

Date: May 4, 2004

STATE OF Texas )  
COUNTY OF Harris ) s.s.:  
)

On the 4th day of May, in the year 2004, before me, the undersigned, personally appeared, Robert W. Teets, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

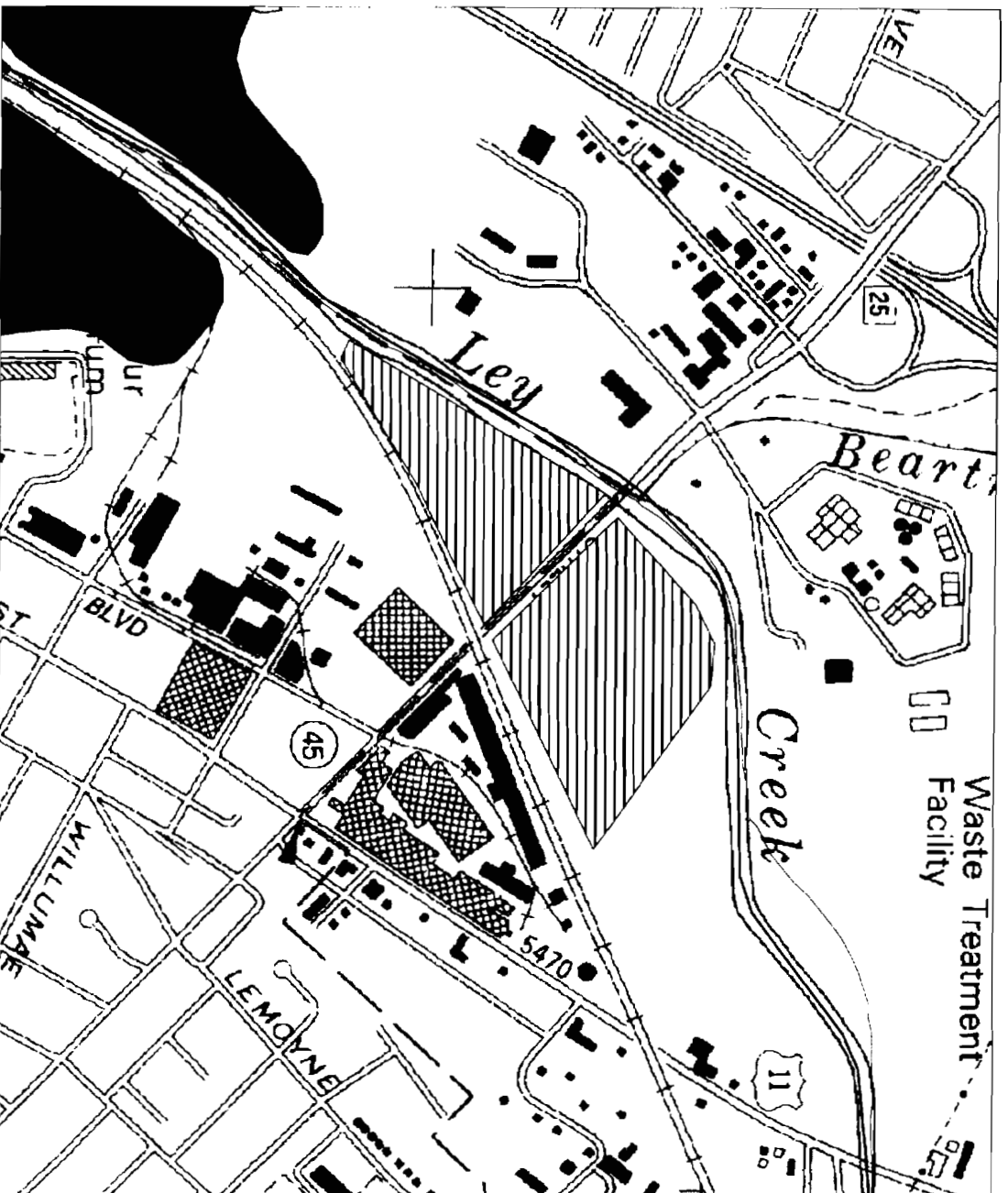
Jeanetta Aguirre  
Notary Public



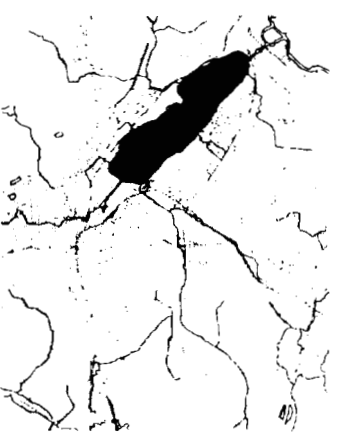
## **APPENDIX A**

### Site Map

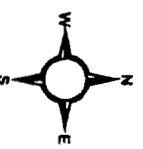
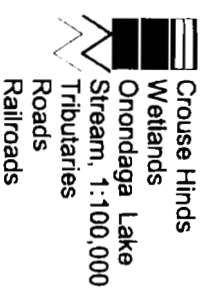
# Crouse-Hinds Site



Approximate location  
Crouse-Hinds Site, 7th North Street, Syracuse, NY  
NYS Site # 734004



Approximate Locations of:



Not to Scale

New York State Department  
of  
Environmental Conservation  
January 2004

## **APPENDIX B**

In accordance with **Subparagraph XIX.D** of this Order, all data gathered for utilization during the PSA and any RI/FS is to be transmitted to the department in electronic format in accordance with the guidelines set forth below.

### **A. Analytical Data**

All analytical data should be provided in both a hard copy format as well as an electronic format. Two (2) copies of each data file should be submitted in either a PC-based spreadsheet format, *e.g.*, \*.xls files, or a database format, *e.g.*, \*.dbf files. The data files shall include all available sample description and location information in one table and laboratory results in another table and be linkable by a sample identification code. The following should also be provided: hard copy/electronic copy of SAP/QAPP and hard copies of field notes and chain of custody forms.

#### **Sample Information:**

The sample information table should include the fields (columns) identified below, where applicable. For spreadsheet files, the field names are the column headings and each sample would occupy one row (record).

- **Sample ID**                      The sample identifier should be unique for a given environmental sample for a specific location (both horizontal and vertical), time, and matrix
- **Station ID**                      Abbreviated description of sample location (*e.g.*, well number [MW101], sediment location [SD8], etc.).
- **Sample Type**                      Field duplicate, MS/MSD, field blank, trip blank, split sample, spatial composite, temporal composite. If other sample types are collected, provide a description.
- **Date Collected**
- **Time Collected**
- **Sample Matrix**    The two-character codes should be used.
- **Location**                      Full description of sample location, including water body name, well number if different from Station ID field, outfall pipe description etc.
- **Sampling Method**              Grab, core, etc.
- **Northing**                      Defines sample location; coordinate system based on NAD 83 datum, Universal Transverse Mercator coordinate (UTM) or NY State Plane in feet

- Easting Defines sample location; coordinate system based on NAD 83 datum, Universal Transverse Mercator coordinate (UTM) or NY State Plane in feet.
- Survey Descriptor of the manner in which the coordinates were determined and the accuracy thereof, *i.e.*, field survey, GPS, scaled off a base map, etc.
- Base Elevation Defines vertical position; elevation referenced to USGS/NGVD 1929 datum.
- Depth Distance above (+) or below (-) base elevation to define the depth of the sample.
- Unit Increment Unit of the depth increment (cm, inches, ft, etc.).
- Reference Point The type of reference point from which the increment is measured, *i.e.*, ground surface (or top of well casing for groundwater sample), water surface, or sediment/water interface.
- Sample Desc. Any additional text to further define the sample, *e.g.*, river mile locations on a tributary, species, length and weight for a biota sample, etc. should be placed in additional, clearly designated fields.

Analytical Data:

The results of analyses for all parameters analyzed (including physical, conventional, and non-conventional parameters) should be included in this table in the following fields (columns), where applicable. Similar to the sample information table, the following fields should be the column headings. For a given sample, each parameter analyzed should be in a separate row and not spread across the columns as separate field names. For example, if ten parameters are analyzed in a single sample, there should be ten rows (records) with the same Sample ID and each of the ten rows would have a unique parameter and value/concentration, as defined below.

- Sample ID Sample ID as stated above to provide linkage
- Parameter Physical or chemical parameter name, *e.g.*, flow/discharge, pH, conductivity, DO, TOC, fish weight, benzene, methyl-mercury, lead, total-PCB, etc. (provide "PARMSORT.DBF" file).
- CAS Number Chemical Abstract No. (if applicable)
- Value Concentration or other measured value
- Unit Units of measurement (mg/L, pg/gm, cfs, etc.)
- Qualifier Data qualifier assigned by laboratory/validator

- Technique                   Analytical method used
- Validation                 Validation status (Y/N)
- Laboratory               Name of laboratory performing analysis
- Analysis Date   Date of analysis if not identical to date of collection

For file-size considerations, the analytical data tables can be separated by sample matrix, *e.g.*, separate tables for sediment data, water data, groundwater data, biota data, etc. However, each table should be structured as defined above.

#### B.       Facility/Site Maps

The PRP shall provide to the Department both paper copies and electronic files of drawings showing the facility/Site. Five (5) sets of paper copies should be provided as well as two (2) copies of each file in an AutoCAD format. Map data used to produce the Site-feature maps should not be taken from maps of smaller scale than 1:24,000. USGS and NYSDOT, 7.5 minute quadrangle maps at 1:24,000 scale are acceptable, but 1:100,000 and 1:250,000 scale maps are not. Lines and points should be located to an accuracy of 25 feet. The Site-feature maps should include, at a minimum, property lines, building locations (including manufacturing areas and waste handling/wastewater treatment areas), topographic and groundwater elevation contours (if available), locations of sewer lines (process, sanitary or combined), storm drains, manholes, out falls to a receiving water body and sampling locations such as monitoring wells. Each of these features should be included on separate layers. Appropriate text descriptions of the features shall be included in each layer. A printout of the layer names and descriptions should be provided. Drawing title boxes should be included on both hard copies and the electronic files. The title boxes should include the name and address (including lot and block numbers) of the facility/Site as well as the name and address of the drawing preparers.

All position data shall be referenced to either the New York Transverse Mercator or New York State Plane Coordinate Systems. All vertical data shall be referenced to the National Geodetic Vertical Datum (NGVD), 1929 Adjustment. A grid system should be used with coordinates clearly identified. In addition, the maps and files should include the locations and coordinates of survey control monuments and benchmarks with surveyor recovery notes. The drawings should be created using real, one-to-one, distances (ft.), *i.e.*, not scaled. Units should use the AutoCAD decimal option.